

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

FILE NO.: CDUA HA-3291
REF: OCCL: MC
Acceptance Date: February 3, 2006
180 Exp. Date: August 2, 2006

July 14, 2006

REGARDING: Single Family Residence

APPLICANT: Lawrence K. Peck
16643 Kipimana St., Unit 14
Kea'au, HI 96749

AGENT: Same as applicant

LANDOWNER: Same as applicant

LOCATION: Kaiwiki Homesteads, South Hilo, Hawaii

TMK: (3) 2-6-11:31

PARCEL SIZE: 25.2 acres

AREA OF USE: 0.55 acres

SUBZONE: Resource

DESCRIPTION OF AREA:

The 25.2-acre property is located in the Kaiwiki Homesteads in the South Hilo District, Hawaii. It is in the Resource Subzone of the Conservation District. **Exhibit 1: Kaiwiki Homesteads** shows the parcel in relation to the Conservation District. The property is bounded by Kaiwiki Road to the north, Ma'ili Stream to the south, a 33-acre parcel containing one SFR and a greenhouse to the east, and a partially cleared 19-acre parcel to the west.

The parcel slopes from 1740 to 1810 feet above sea level. The slope is gentle near Kaiwiki Road, where the house will be sited, and is steeper in the southern, back portion of the property.

Mā'ili Stream runs along the southern portion of the property. **Exhibit 2: Topography** shows one-foot contour intervals and the house site.

The parcel is densely vegetated, with uluhe fern (*Cibotium splendens*) and the invasive waiwi, or strawberry guava (*Psidium cattleianum*), dominating. There are a few native species present, including koa (*Acacia hawaiiensis*), 'ōhi'a lehua (*Metrosideros pollymorphia*), and hapu fern (*Dicranopteris linearis*). The parcels to the west and east have been 40% and 50% cleared, respectively. **Exhibit 3: Subject Parcel** shows the applicant's property, while **Exhibit 4: Neighboring Parcels** shows the cleared areas to the west and east.

The parcel was previously used as a dairy farm, and contains no surface historic or archaeological sites.

PROPOSED PROJECT:

The applicant proposes to build a single-family residence (SFR) in the northwest corner of the parcel, 50 feet off Kaiwiki road. The SFR is a single two-story structure totaling 4019 square feet. The first floor includes 1900-ft² of living area, three lanai totaling 532-ft², a 400-ft² carport, and a 467-ft² enclosed garage. The second floor has 564-ft² of living area and a 156- ft² lanai. The entire structure is 24'11" in height. There will also be a 100-ft² utility shed detached from the property. Total developed area will be 4119-ft². The CDUA includes a 255-ft² water tank in its calculations; water tanks are generally not included in computing total developed areas.

The SFR will be built on a post and pier foundation, and no grading will be necessary. A 700-foot long gravel driveway, totaling 4760- ft², will connect the house to Kaiwiki Road. Other accessory structures include a 100- ft² outbuilding for utilities, a 225- ft² water storage tank, and a county-approved individual wastewater system. **Exhibit 5: Floor Plan, Exhibit 7: Second Floor and Exhibit 8: Site Plan** show the relevant structures.

The planned setback is 50 foot from Kaiwiki Road (front), 50 feet from the western boundary, 600 feet from the eastern boundary, and over 1600 feet from the southern boundary. The SFR meets the required minimum setback of 25 feet from all sides of the subject parcel. No work will be done within 1600' of Mā'ili Stream.

The applicant also plans to clear 0.55 acres of brush around the house. Plants to be removed include uluhe fern and over 100 waiwi. No grading or grubbing will occur, and hand tools will be used. The applicant plans to leave the indigenous koa trees (*Acacia hawaiiensis*) and 'ōhi'a lehua (*Metrosideros pollymorphia*).

The applicant notes that in 1987 the DLNR State Parks Administrator stated that it was unlikely that significant historic sites would be found in the Kaiwiki Homesteads area.

AGENCY COMMENTS:

The CDUA and Draft Environmental Assessment were referred for review and comment to the DLNR – Division of Forestry and Wildlife, Historic Preservation Division, Land Division, Aquatic Resources Division; Department of Business, Economic Development and Tourism, Land Use Commission; Hawai'i County Planning Department; The Department of Health Office of Environmental Quality Control. The documents were also made available to the general public at the Hilo Public Library.

The following comments were received:

County of Hawai'i Planning Department

The Planning Department notes that the CDUA does not discuss traditional and customary native Hawaiian rights, nor does it discuss fauna.

Applicant Response

Previous use of the land does not indicate that the area was used for cultural or religious purposes. The project will not interfere with indigenous practices should new information come forward. The use will not inhibit access to the shoreline, water rights, religious, cultural, and or gathering rights.

The majority of fauna on the parcel is introduced. The most common ground animals are mongoose, rats, and feral dogs and pigs. Bird life is dominated by mynah, sparrows, cardinals, and finches. It is possible that native birds such as the pueo (Hawaiian owl, Asio flammeus sandwichensis) and the 'Io (Hawaiian Hawk, Buteo solitarius) fly over the area.

Office of Hawaiian Affairs

OHA has no comments specific to the proposal.

OHA also requests that, should iwi or Native Hawaiian cultural or traditional deposits be found work will cease immediately and the State Historic Preservation Division be contacted.

Applicant Response

Applicant will cease work and contact the Historic Preservation Division should iwi or Native Hawaiian cultural or traditional deposits be found.

OCCL Comments

OCCL was concerned that the property was listed as "for sale" on a number of websites, and that this seemed to contradict the applicant's assertion that the SFR was intended as a final home for him and his family.

Applicant Response

Applicant told OCCL staff in a telephone conversation that he had listed the property as for sale after a prior CDUA for an SFR had been rejected by the OCCL. Applicant stated that he did not realize that the listing was still active, and agreed to remove it.

Community Comments

Questions received by community member Claudia Rohr are contained in **Exhibit 8: Community Questions**.

Applicant Response

Applicant's response is contained in **Exhibit 9: Applicant's Response**.

DLNR – Land Division

No Comments

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated February 14, 2006 that:

1. The SFR was an identified land use within the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-24 *Identified land uses in the resource subzone, R-8 Single Family Residence, (D-1)*. A permit was required for this use, and that the final decision as to whether to grant or deny the permit lies with the Board of Land and Natural Resources (BLNR).
2. Pursuant to HAR §13-5-40 *Hearings*, a public hearing was not required.
3. Pursuant to HAR §13-5-31 *Permit applications*, the permit required that an environmental assessment be carried out. The draft environmental assessment (DEA) was published in the March 8, 2006 issue of the Office of Environmental Quality Control (OEQC)'s *Environmental Notice*.

A Finding of No Significant Impact (FONSI) was published in the OEQC's *Environmental Notice* on May 23, 2006. There were no challenges to the FONSI.

§13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30 HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Staff is of the opinion that the proposed action will increase structural density on a vacant parcel. Staff has found that the proposed use within the Conservation District will not be detrimental to conservation values.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

Staff notes that both the proposed SFR is an identified land use within the Resource Subzone. Staff notes that the proposed project has met the restrictive criteria and that the project and associated landscaping should have minimal impact on the natural resources of the area. The clearing of invasive species might have a positive impact by allowing existing indigenous species on the parcel to better compete for resources.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The project complies with the policies and objectives of the Coastal Zone Management Program.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff notes that the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate mitigation measures are implemented. Other neighboring parcels have been fully or partially cleared, and there are other small single-family residences to the east and west of the subject parcel. Staff notes that the proposed project will not detract from the rural character of the area.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the proposed SFR will fit into the locality and surrounding areas, with the use of Best Management Practices and without significant or deleterious effects to the locality, surrounding area and parcel.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the applicant has taken the appropriate steps to mitigate any potential impacts, and to maximize and enhance the natural beauty and open space characteristics of the subject parcel. The proposed project is intended to blend in visually with the surrounding area.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare.

DISCUSSION:

The SFR is an identified land uses in the Resource Subzone pursuant to HAR§13-5-24 *Identified land uses in the resource subzone, R-8 Single Family Residence, (D-1).*

The parcel in question was once used as a dairy farm. The land has been unmanaged for the past forty years, and has become overgrown with a mix of invasive and native species. The residence and accessory structures cover 4,374 square feet. The project complies with all design guidelines for an SFR in the Conservation District.

The landscaping on the parcel will be minimal, and does not involve any grubbing or grading. The applicant plans on removing invasive species by hand from 0.55 acres of the 25-acre parcel. Indigenous species such as 'ōhi'a, koa, and hapu'u will be left alone. The climate is wet and mild, so no irrigation will be needed to maintain the landscaped area. The house, accessory structures, and landscaping are all contained in the northwest corner of the 25-acre parcel, leaving the majority in its natural state.

The residence and associated landscaping are similar to other land uses in the neighborhood.

There are no public utilities on the parcel. A water storage system will provide water, a solar system and propane-fuel generator will supply electricity, and a county-approved cesspool will handle wastewater disposal.

There are no known historic sites on the parcel.

OCCL does not believe that there will be any significant negative environmental or social impacts from the residence, accessory structures, or associated landscaping.

Therefore, staff recommends the following:

RECOMMENDATION:

That the Board of Land and Natural Resources APPROVE CDUA HA-3291 for the proposed Peck Single Family Residence in the Kaiwiki Homesteads, South Hilo, Hawai'i, TMK (3) 2-6-11:31, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawai'i Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction must be completed within three years of the approval;
6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

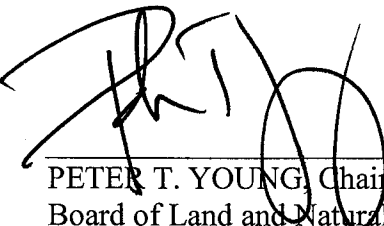
8. The applicant will use Best Management Practices for the proposed project;
9. The applicant will give preference towards using native plants for the remaining landscape work;
10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
14. Other terms and conditions as may be prescribed by the Chairperson; and
15. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully Submitted,



Michael Cain
Staff Planner

By:



PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

Exhibit 1: TMK (3) 2-6-11:31, Kaiwika Homesteads, South Hilo, Hawaii

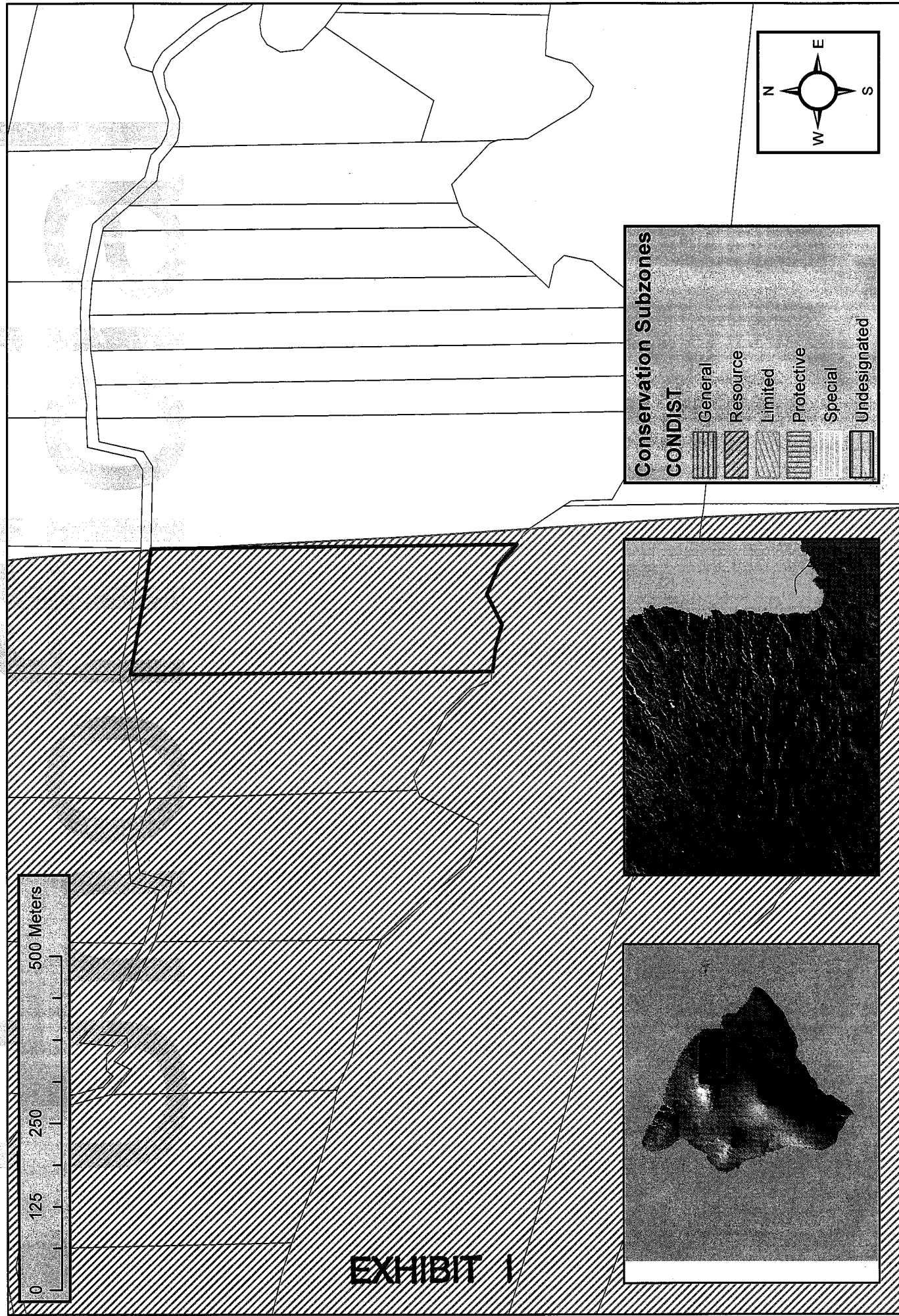
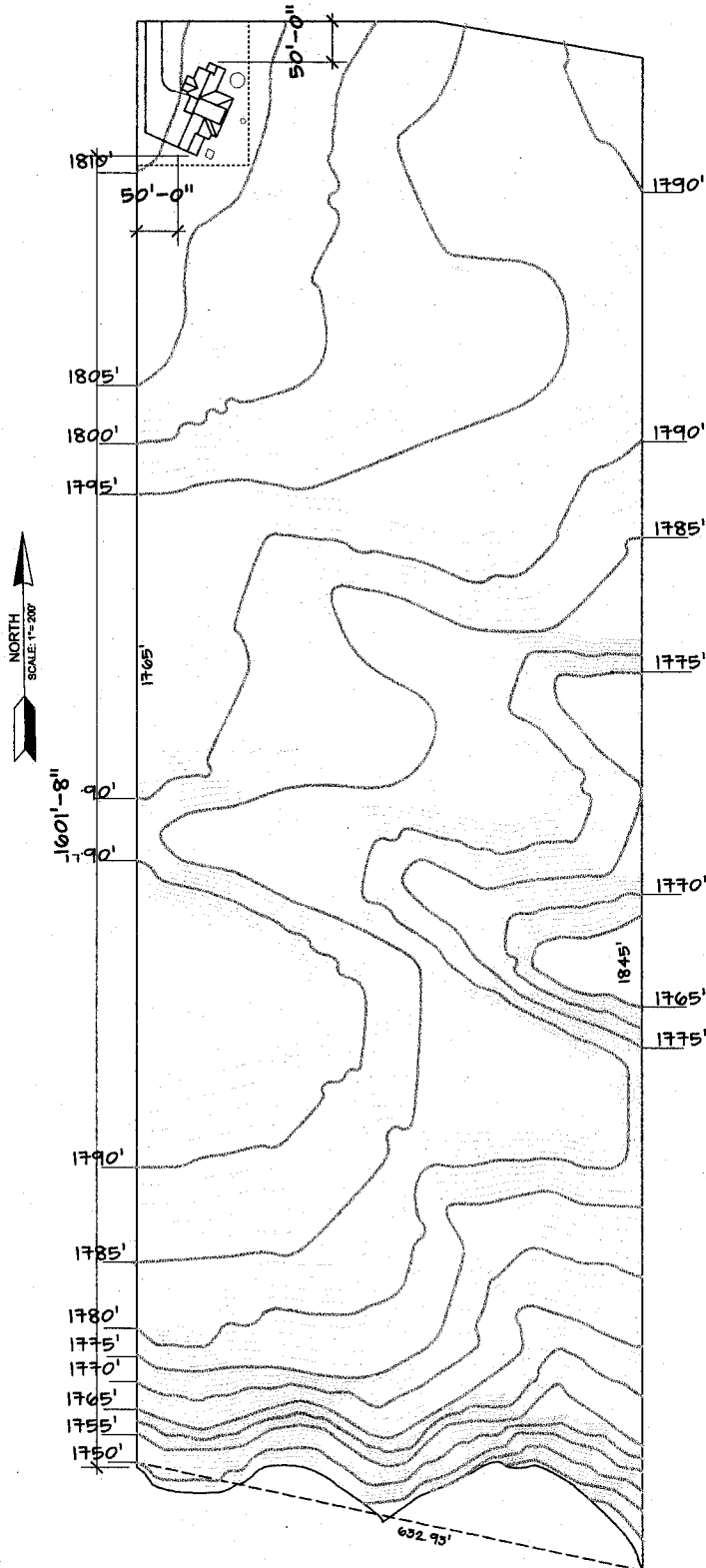


EXHIBIT 1



- NOTES:
1. SURVEY PERFORMED ON THE GROUND ON MAY 27, 2005.
 2. TOPO PERFORMED ON THE GROUND, BY USE OF GPS AND BY USE OF DATA COLLECTED FROM USGS TOPOGRAPHICAL MAPS.
 3. ELEVATIONS ARE "ASSUMED".
 4. DRAWING SCALE: 1" = 150'.



Topographic Map
 showing existing conditions upon
 LOT 50
 Kaiwili Homesteads Subdivision
 Kaiwili, Hilo District, county of Hawaii, Island of Hawaii, Hawaii
 TMK: (3) 2-6-011:031

EXHIBIT 2

**PECK SINGLE FAMILY DWELLING AND
ASSOCIATED IMPROVEMENTS IN THE
CONSERVATION DISTRICT**

EXHIBITS



PHOTO 1

Proposed building site. Staghorn fern will be cleared by hand.



PHOTO 2
Neighboring Eastside property.



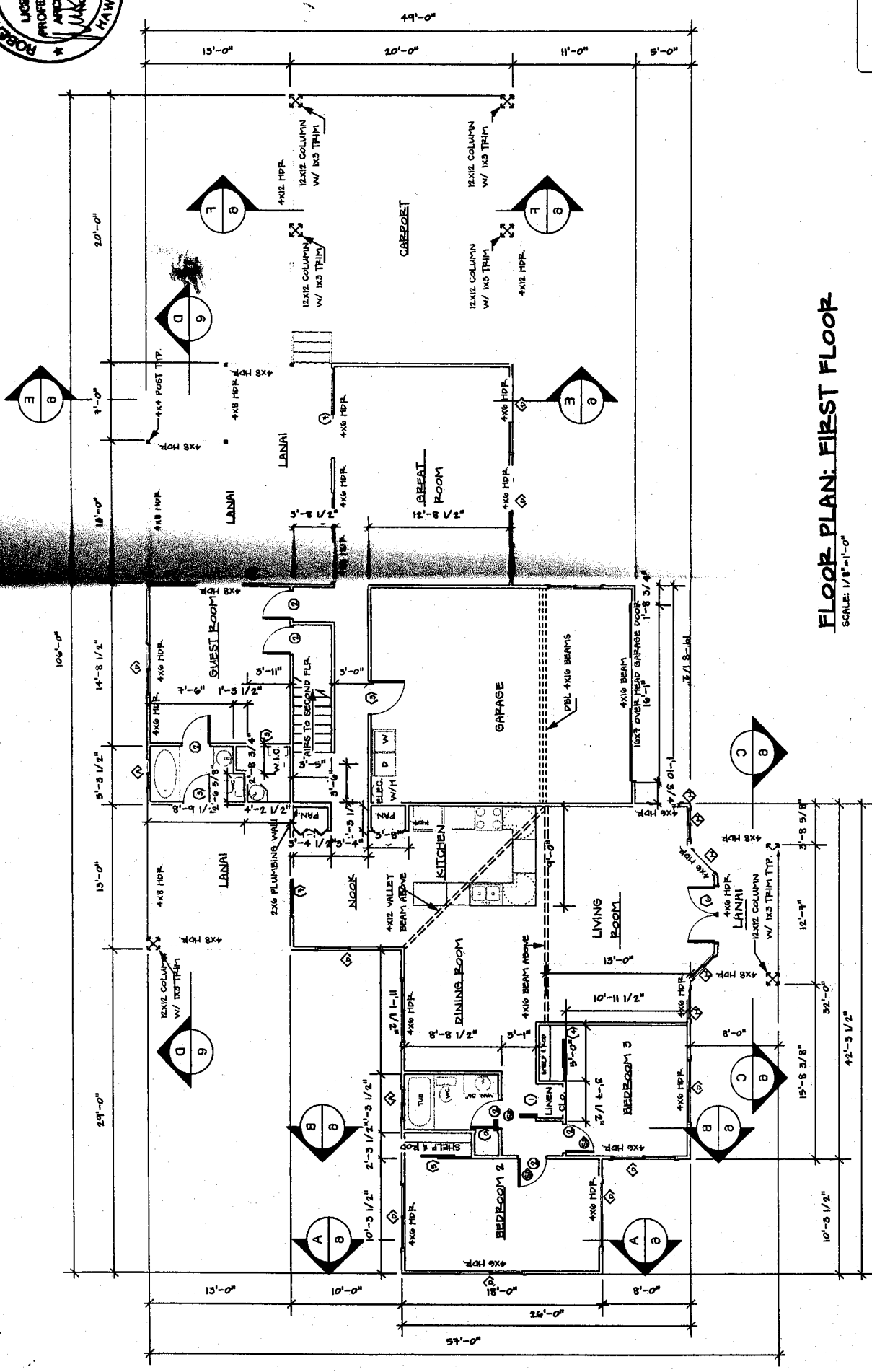
PHOTO 3
Neighboring Westside property.

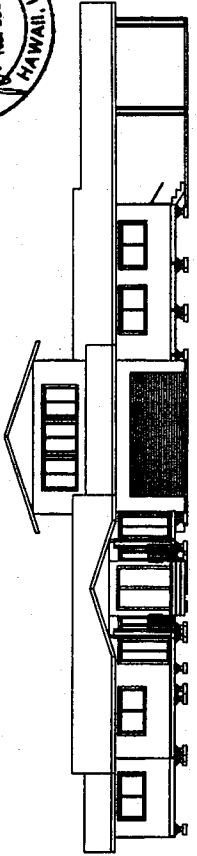
EXHIBIT 4



FLOOR PLAN: FIRST FLOOR
SCALE: 1/8"=1'-0"

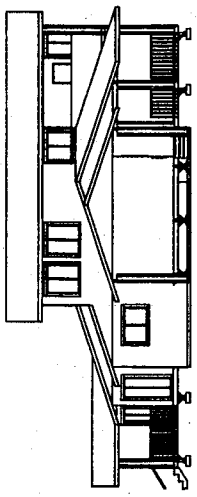
EXHIBIT 5





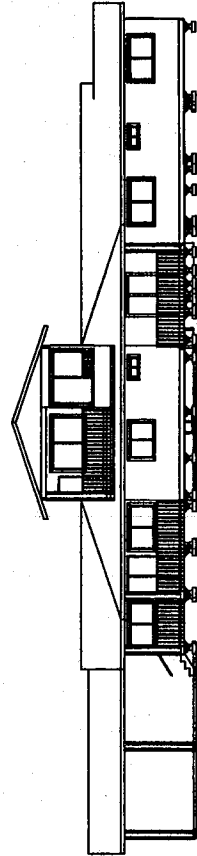
FRONT EXTERIOR ELEVATION

SCALE: N.T.S. (NOT TO SCALE)



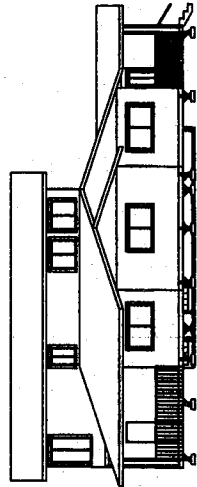
RIGHT EXTERIOR ELEVATION

SCALE: N.T.S. (NOT TO SCALE)



REAR EXTERIOR ELEVATION

SCALE: N.T.S. (NOT TO SCALE)



LEFT EXTERIOR ELEVATION

SCALE: N.T.S. (NOT TO SCALE)

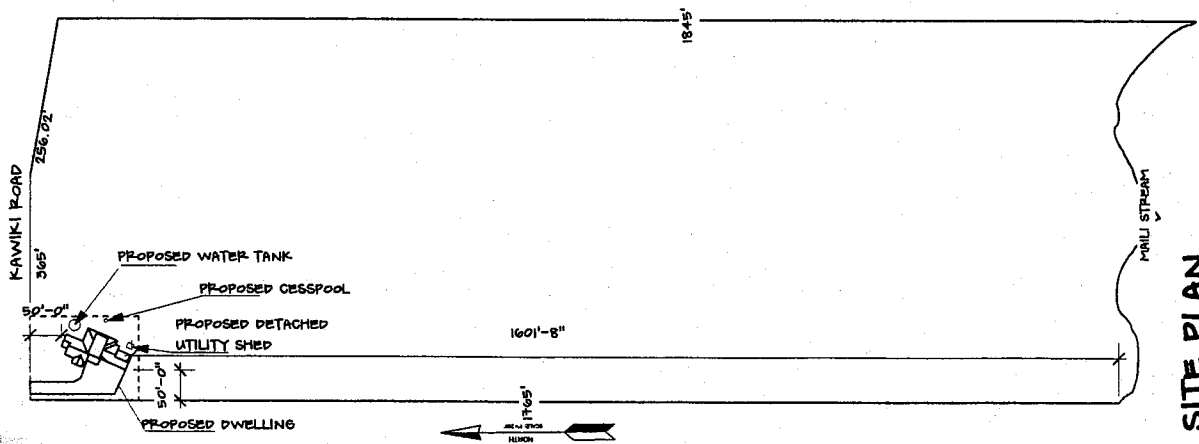
SHEET 1

SPECIFICATIONS: MDA

5000 sq. ft.	MDA
-2464 sq. ft.	LIVING AREA
-688 sq. ft.	LANAIS
-467 sq. ft.	GARAGE
-400 sq. ft.	CARPORT
-100 sq. ft.	UTILITY SHED
-255 sq. ft.	WATER STORAGE TANK
6026 sq. ft.	REMAINING MDA

ROOMS & FEATURES

4 BEDROOMS	3 1/2 BATHS
LIVING ROOM	GREAT ROOM
KITCHEN	DINING ROOM
NOOK	4 LANAIS
GARAGE	CARPORT



SITE PLAN

SCALE: 1" = 200'

Re: Peck-Kaiwiki Single-Family Residence, Hilo (HRS 343 DEA)

Dear Ms. Genevieve Salmonson and Mr. Sam Lemmo,

Please be advised that this EA notice appears improperly published.

- 1) The wrong TMK was published. The correct TMK is 3-2-6-11-31.
- 2) Is Larry Peck a consultant? I thought he was a building contractor. In this case he is the landowner.
- 3) I believe the administrative rules require that the notice state where the EA can be viewed. Please let me know if I am incorrect.
- 4) I believe a NPDES NOI permit may be required and should be listed on the notice.

Other questions for applicant:

Dear Mr. Peck,

- 5) Is this a business venture or personal residence? How long would you expect to live here, if for personal residence?
- 6) Are you building on conservation district land because you can no longer find or it is difficult to find affordable property in other land use districts?
- 7) Why is this property classified conservation? To protect what resource? What does Fred Tallon at the LUC have to tell you on the subject of how the conservation district mapping was done in your area? (808-587-3822, luc@dbedt.hawaii.gov)
- 8) Are there any streams on the property or within 1300 feet of the property? What is the name? Is there fauna in the stream? What does Bob Nishimoto (974-6201), DLNR's biologist who inventories the local streams tell you about this particular stream system? Has he inventoried this stream? Have you heard of the native gobi or opu'u in your area? Can you tell me why we need to protect native insect habitat and the role they play in the natural stream systems in Hawaii?
- 9) How far off the roadway will you be building the house? How long will the driveway be? Will you have to cross any streams, drainage ways, or drainage easements? Will you be installing any culverts? Where?
- 10) How much of the native forest will be removed or disturbed (including hapu, native ferns and ground covers)?
- 11) Have you tried to understand the research on the causes of global warming? Would you ever consider encumbering the remainder of the property with a "forest reserve" easement if it provided tax incentives and qualified as part of the Nature's Conservancy's Big Island carbon sequestration project (retaining forest land as a carbon bank)? If you were allowed to replant the native forest that has been destroyed by grazing? If you were allowed to develop a productive sustainable forestry project and harvest timber?
- 12) How close is the county's water supply source? Is it a well or from surface water? Are there plans for any more county wells in the area? What do the engineers at HC Water supply tell you?
- 13) Have you ever applied and received a NPDES NOI permit before? Is it required by the clean water department in this case? What does Alex Wong at the DOH Clean Water Department say? (586-4309, fax 586-4352)
- 14) What impacts must be mitigated to protect water quality and what measures will be taken to do so?

Sincerely,

Claudia Rohr
369 Nene St.
Hilo, HI 96720
934-8040

EXHIBIT 8

Claudia Rohr
369 Nene St.
Hilo, HI 96720

Re: Peck Family CDUA and DEA, TMK: (3) 2-6-011-031 Lot 50

Dear Claudia Rohr;

Thank you for reviewing the above mentioned application and DEA. Please find following response to your questions:

- 5) This is a personal residence. It is hoped to be our last home, one we hope to pass on to our children
- 6) I am building on this parcel because it is the only one we own in the area we desire.
- 7) The conservation classification was determined by drawing a line on a map as far as I have been able to determine.
- 8) Miale Stream borders the property on the south side. It is my understanding that no endangered species are found in the stream and the proposed project will not be near or have any affect on the stream.
- 9) The set back of the dwelling is proposed to be 50 feet with a 100 foot driveway. No streams or drainage easements will be crossed.
- 10) None. There is none to remove alien species have over grown the area.
- 11) No. Forest reserve easement could be a consideration. Replanting native forest as a sustainable forest would be desirable.
- 12) We are several miles from County water.
- 13) A NPDES NOI permit is not required not has one been applied for. The responses I have received from the Department of Water regarding my CDUA is "no comment".
- 14) Water quality will not be impacted by the proposed project.

I hope this letter will provide the adequate answers to your concerns.

Sincerely

Lawrence P Peck

EXHIBIT 9